

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 3<sup>rd</sup> day of October, two thousand seven.

PRESENT: HON. DENNIS JACOBS,  
Chief Judge,  
HON. SONIA SOTOMAYOR,  
HON. DEBRA ANN LIVINGSTON,  
Circuit Judges.

- - - - -X  
BI WU LIU,  
Petitioner,

-v.-

06-3434-ag

PETER D. KEISLER, ACTING UNITED STATES  
ATTORNEY GENERAL,\*  
Respondent.

- - - - -X  
FOR PETITIONER: THOMAS V. MASSUCCI, New York,  
New York.

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\*Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1 **FOR RESPONDENT:**

ANNE M. HAYES, Assistant United  
States Attorney (Jennifer P.  
May-Parker, of counsel; George  
E. B. Holding, Acting United  
States Attorney, Eastern  
District of North Carolina, on  
the brief), United States  
Attorney's Office for the  
Eastern District of North  
Carolina, Raleigh, North  
Carolina.

13 **UPON DUE CONSIDERATION** of this petition for review of  
14 the Board of Immigration Appeals ("BIA") decision, **IT IS**  
15 **HEREBY ORDERED, ADJUDGED AND DECREED** that the petition for  
16 review is **DENIED**.

18 Bi Wu Liu, a citizen of China, petitions for review of  
19 the June 30, 2006 BIA decision affirming the April 29, 2005  
20 decision of Immigration Judge ("IJ") Adam Opaciuch denying  
21 Liu's applications for asylum, withholding of removal, and  
22 relief under the Convention Against Torture ("CAT"). In re  
23 Bi Wu Liu, No. A97-965-351 (B.I.A. June 30, 2006), aff'g No.  
24 A97-965-351 (Immig. Ct. N.Y. City Apr. 29, 2005). We assume  
25 the parties' familiarity with the underlying facts and  
26 procedural history of the case.

28 When the BIA issues an opinion that fully adopts the  
29 IJ's decision, this Court reviews the IJ's decision.  
30 See Chun Gao v. Gonzales, 424 F.3d 122, 124 (2d Cir. 2005);  
31 Secaida-Rosales v. INS, 331 F.3d 297, 305 (2d Cir. 2003).

33 As a preliminary matter, we dismiss the petition for  
34 review as to Liu's asylum claim. Title 8, Section  
35 1158(a)(3) of the United States Code provides that no court  
36 shall have jurisdiction to review the agency's finding that  
37 an asylum application was untimely under 8 U.S.C. §  
38 1158(a)(2)(B), or the agency's finding that the lateness is  
39 unexcused by changed or extraordinary circumstances under 8  
40 U.S.C. § 1158(a)(2)(D). Notwithstanding that provision,  
41 however, this Court claims jurisdiction to review  
42 "constitutional claims" and "questions of law." 8 U.S.C. §  
43 1252(a)(2)(D). Liu's arguments, which quarrel with the IJ's  
44 purely factual determinations and the IJ's exercise of  
45 discretion, raise no colorable constitutional claim or  
46 question of law. See Xiao Ji Chen v. U.S. Dep't of Justice,

1 471 F.3d 315, 329 (2d Cir. 2006). Accordingly, we lack  
2 jurisdiction to review Liu's asylum claim.  
3

4 The untimeliness provisions of 8 U.S.C. § 1158(a)(2) do  
5 not apply to Liu's withholding of removal claim; we  
6 therefore review the IJ's decision as to that claim on the  
7 merits. This Court has recently determined that an alien  
8 who is the spouse, fiancé, or boyfriend of an individual who  
9 was forcibly sterilized does not automatically attain  
10 refugee status on that basis alone. See Shi Liang Lin v.  
11 U.S. Dep't of Justice, 494 F.3d 296, 300 (2d Cir. 2007) (en  
12 banc). Absent proof of "other resistance" to coercive  
13 family planning policies or well-founded fear of future  
14 persecution on account of such resistance, such aliens are  
15 ineligible for asylum. Id. at 309-10. It is undisputed  
16 that Liu's withholding of removal claim depends solely on  
17 his assertion that his wife was forcibly sterilized and not  
18 on the basis of any "other resistance" to coercive family  
19 planning policies. Therefore, he is ineligible for both  
20 asylum and withholding of removal.\*\*  
21

22 Because Liu has failed to sufficiently argue his CAT  
23 claim before this Court, and because addressing this  
24 argument does not appear to be necessary to avoid manifest  
25 injustice, any such argument is deemed waived. See Yueqing  
26 Zhang v. Gonzales, 426 F.3d 540, 541 n.1 (2d Cir. 2005)  
27 (explaining that issues not sufficiently argued in the  
28 briefs are considered waived and normally will not be  
29 addressed on appeal).  
30

31 For the foregoing reasons, the petition for review is  
32 hereby **DENIED**. The pending motion for a stay of removal in  
33 this petition is **DISMISSED**.  
34  
35

36 FOR THE COURT:  
37 CATHERINE O'HAGAN WOLFE, CLERK  
38 By:  
39  
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41 \_\_\_\_\_  
Olivia M. George, Deputy Clerk

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\*\* Judge Sotomayor continues to disagree with the majority opinion in Shi Liang Lin to the extent it applies beyond unmarried partners, see Shi Liang Lin, 494 F.3d at 327 (Sotomayor, J., concurring), but she is bound by court precedent, see United States v. Wilkerson, 361 F.3d 717, 732 (2d Cir. 2004).